

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bucolo et al.
Application No. : 10/812,551
Filed : March 29, 2004
Title : NEW FREE-RADICAL SCAVENGER CONTAINING
VISCOELASTIC COMPOSITION, METHODS OF USE AND
PACKAGE
Examiner : Benjamin J. Packard
Group/Art Unit : 1612
Conf. No. : 3392
Docket No. : P03491

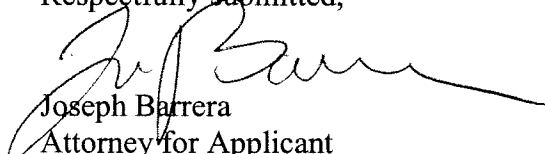
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Sir:

In response to the Notification of Non-Compliant Appeal Brief dated June 3, 2009,
Applicants submit revised pages 3 and 4 of the Appeal Brief under 37 C.F.R. §41.37. As the
requisite fee under 37 C.F.R. § 41.20(b)(2) was submitted in the initial filing no fee is due.

Respectfully submitted,


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Dated: June 8, 2009

REAL PARTY IN INTEREST

The real party in interest is Bausch & Lomb, Inc. having its principal place of business at One Bausch & Lomb Place, Rochester, NY.

RELATED APPEALS AND INTERFERENCES

None

STATUS OF CLAIMS

The claims subject to this Appeal are claims 1, 6-11, 20, 22, 25-28 and 47 all of which are under final rejection. Claims 2-5, 12-14, 18, 19, 21, 23, 24, and 29-46 are canceled. Claims 15-17 are withdrawn. No claims have been allowed. A listing of the claims subject to this Appeal are provided in the requisite Appendix.

STATUS OF AMENDMENTS

The claim amendments presented in the Amendment and Response under 37 C.F.R. § 1.111, filed November 4, 2008 were entered by the examiner.

SUMMARY OF CLAIMED SUBJECT MATTER

With respect to claim 1, the claimed subject matter is directed to a viscoelastic composition comprising a viscoelastic polymer. The viscoelastic polymer comprises a mixture of hyaluronic acid and/or salts thereof and hydroxypropyl methylcellulose. See, title and page 1, 1st paragraph; page 3, 2nd paragraph. The concentration of hyaluronic acid and/or salts thereof is a minimum of about 0.1%w/v and a maximum of about 6%w/v and the concentration of hydroxypropyl methylcellulose is a minimum of about 0.05%w/v and a maximum of about 5%w/v, based upon the total volume of the viscoelastic composition. Page 3, 2nd paragraph; original claim 1. The composition also comprises tris[hydroxymethyl]aminomethane at a maximum of about 50mM and a

minimum of about 0.1mM based upon the total weight of the viscoelastic composition.

Id. The composition also comprises a hexahydric alcohol. Id.

With respect to claim 47, and as in claim 1, the claimed subject matter is directed to a viscoelastic composition comprising a viscoelastic polymer. The viscoelastic polymer comprises a mixture of hyaluronic acid and/or salts thereof and hydroxypropyl methylcellulose. See, title and page 1, 1st paragraph; page 3, 2nd paragraph. The concentration of hyaluronic acid and/or salts thereof is a minimum of about 0.1%w/v and a maximum of about 6%w/v and the concentration of hydroxypropyl methylcellulose is a minimum of about 0.05%w/v and a maximum of about 5%w/v, based upon the total volume of the viscoelastic composition. Page 3, 2nd paragraph; original claim 1. The composition also comprises tris[hydroxymethyl]aminomethane at a maximum of about 50mM and a minimum of about 0.1mM based upon the total weight of the viscoelastic composition. Id. The composition also comprises a hexahydric alcohol. Id. the hexahydric alcohol is selected from mannitol or sorbitol. Page 5, 3rd, paragraph; original claims 2 and 3. Also, the viscoelastic composition possesses an optimal viscosity profile having a zero-shear viscosity from $6 \cdot 10^4$ cps to $4 \cdot 10^6$ cps, and a high-shear viscosity from 500 cps to 2000 cps. Page 9, 2nd and 3rd paragraphs; original claims 13 and 14.

GROUND OF REJECTION

Whether claims 1, 6-11, 25-28 and 47 are obvious under 35 U.S.C. § 103(a) over Singh et al. (US 2003/0232089) in view of Olejnik et al. (US 5,597,559) and Gohzu et al. (US 5,013,445).

Whether claim 20 is obvious under 35 U.S.C. § 103(a) over Singh in view of Olejnik and Gohzu, and further in view of Cantoro (US 5,597,599).